

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DAVID CARL PHELPS,	)	8:14CV151
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
MARIO PEART,	)	
	)	
Respondent.	)	
_____	)	

Petitioner has moved the court to suspend the briefing schedule that was jointly proposed by the parties and adopted by the court on June 2, 2015 (Filing No. [18](#), as modified on August 11, 2015 (Filing No. [22](#)), September 17, 2015 (Filing No. [26](#)), and October 14, 2015 (Filing No. [28](#))), and to conduct an evidentiary hearing on his gateway claim of actual innocence (Filing No. [29](#)). In support of his motion, Petitioner “states that an evidentiary hearing is required to all him to authenticate and admit a diary and related evidence that indicates that someone else perpetrated the crime for which [Petitioner] was convicted” (*id.*). Respondent has not responded to Petitioner’s motion, which was filed on November 12, 2015.

It is not clear to the court why Petitioner believes an evidentiary hearing is necessary, since “supplemental state court records from the Nebraska Supreme Court appeal record of State v. John R. Oldson, Nebraska Supreme Court case # 13-562,” were filed by Respondent on September 14, 2015 (Filing No. [25](#)). Petitioner has not indicated that he intends to offer any evidence beyond those records.

In order to clarify the situation, therefore,

IT IS ORDERED:

1. On or before January 27, 2016, Petitioner shall file a supplemental brief in support of his motion for hearing (Filing No. [29](#)) in which he shall:
  - a. Specify why an evidentiary hearing is necessary; and
  - b. Describe in detail what evidence he intends to offer at such hearing.
2. Respondent shall respond to Petitioner's supplemental brief within 21 days after its filing and service, and shall indicate whether he has objections to any of the evidence identified by Petitioner.
3. Petitioner shall have 7 days after filing and service of Respondent's brief to file a reply.
4. Petitioner shall not be required to respond to Respondent's initial brief (Filing No. [23](#)) until further ordered by the court.

DATED this 6<sup>th</sup> day of January, 2016.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge